

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

Michael Mann, Meryl Mann and BAM L.P.

Defendants.

Adv. Pro. No. 10-04390 (SMB)

**DECLARATION OF ARTHUR H. RUEGGER IN OPPOSITION
TO TRUSTEE'S MOTION FOR SUMMARY JUDGMENT**

I, Arthur H. Ruegger, do hereby declare under penalty of perjury, pursuant to section 1746 of title 28 of the United States Code, as follows:

1. I am Senior Counsel in the law firm of Dentons US LLP, counsel to Defendants Michael and Meryl Mann and BAM L.P. (the "Defendants").

2. I make this Declaration pursuant to Federal Rule of Bankruptcy Procedures 7056 and Local Rule 7056-1 in opposition to the motion for summary judgment filed on December 21,

2018 by Irving H. Picard (the “Trustee”), the Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) against Defendants.¹

3. I have reviewed the court documents referenced herein, which include documents from the official record of this adversary proceeding in the Bankruptcy Court (*Picard v. BAM, L.P.*, Adv. No 10-04390 (SMB)), the record in the United States District Court for the Southern District of New York of this adversary proceeding (*Picard v. BAM, L.P.*, No. 11-cv-07667 (JSR) (S.D.N.Y. Jan. 25, 2012)), the record of the main case for BLMIS (*Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities LLC*, Adv. No 08-01789 (SMB) and certain transcripts from the criminal proceedings against Bernard L. Madoff (“Madoff”) and employees of BLMIS. I have also reviewed certain documents with respect to the Defendants’ customer claims and accounts, and Madoff and BLMIS operations, produced by the Trustee in discovery and bearing the bates stamped numbers of the Trustee’s data room.

4. Attached hereto as Exhibit A are true and correct copies of the documents dated December 16, 1995, bearing bates numbers AMF00256535-00256544, establishing the account, assigned Account No. 1CM363, in the name of Michael and Meryl Mann as Joint Tenants With Right of Survivorship with Bernard L. Madoff Investment Securities (the “Mann Account”).

5. Attached hereto as Exhibit B are true and correct copies of the documents dated March 23, 1999, bearing bates numbers AMF00267043-00267051, establishing the account, assigned Account No. 1CM579, in the name of BAM L.P. with Bernard L. Madoff Investment Securities (the “BAM Account”).

¹ Defendants have not consented to the entry of a final order by the Bankruptcy Court and timely requested a jury trial. As the Court is aware, the Defendants contend they have not waived their right to a jury trial as their claims have been disallowed and the Court lacks jurisdiction to enter a final order in this proceeding. The Defendants have filed a Notice of Appeal and Motion for Leave to Appeal from this Court’s Memorandum and Order date January 18, 2019. Accordingly, the Defendants have prepared their responses and objections under protest and with a reservation of rights. Nothing herein should be deemed a waiver of the Defendants’ right to a jury trial or submission to the equitable jurisdiction of the Bankruptcy Court for final adjudication of this motion.

6. Attached hereto as Exhibit C are true and correct copies of checks dated March 7, 2007 and October 24, 2007 payable to the order of Michael and Meryl Mann J/T WROS written on the Chase Account No. 6301428151 509 in the name of Bernard L. Madoff (the "Chase 509 Account"). To the best of my knowledge and information, all of the checks that were paid to the order of Michael and Meryl Mann were written on the same Madoff account. Attached hereto are true and correct copies of the checks dated April 16, 2003, December 16, 2004 and March 20, 2005. These checks bear the bates numbers MADWAA00203642, 00266152, 00306470, 00333863 and 00367001.

7. Attached hereto as Exhibit D is a true and correct copy of the account statement for the Mann Account dated November 30, 2006, bearing bates numbers MDPTPP01251488-01251492.

8. Attached hereto as Exhibit E are true and correct copies of the account statements for the Mann Account dated February 28, 2007 and September 30, 2007 bearing bates numbers MDPTPP01251503-01251508 and MDPTPP01251544-01251549.

9. Attached hereto as Exhibit F is a true and correct copy of the account statement for the BAM Account dated November 30, 2006 bearing bates numbers MDPT01665737-01665741.

10. Attached hereto as Exhibit G are true and correct copies of the account statements for the BAM Account dated March 31, 2007, June 30, 2007, September 30, 2007, December 31, 2007, and March 31, 2008, bearing bates numbers MDPTPP01665759-01665763, 01665778-01665783, 01665792-01665797, 01665808-01665812 and 01665819-01665820.

11. Attached hereto as Exhibit H are true and correct copies of checks made payable to BAM L.P. dated April 17, 2007, July 25, 2007, October 24, 2007, January 23, 2008 and April 23, 2008, written on the Chase 509 Account in the name of Bernard L. Madoff. Also attached hereto

as Exhibit H are earlier checks made payable to BAM L.P. written on the Chase 509 Account and dated April 25, 2000, October 12, 2000, April 23, 2002, June 25, 2002, April 16, 2003, January 6, 2004, March 2, 2005 April 8, 2005, and January 5, 2006. The bates numbers for these checks are MADWAA00267722, 00279600, 00266160, 00290613, 00298075, 00048606, 00242399, 00064596, 00110010, 00306476, 00235780, 00159427, 00165503 and 00361956.

12. Attached hereto as Exhibit I are true and correct copies of the August 28, 2009 and October 19, 2009 Determinations of Claims sent to the Defendants.

13. Attached hereto as Exhibit J are true and correct copies of the annual portfolio management reports provided to the Manns for the Mann Account for the period from January 2002 through 2008, bearing bates numbers MDPTQQ00131056, 00131068, 00131080, 00131092, 00131104, 00131116 and 00131127.

14. Attached hereto as Exhibit K are true and copies of the portfolio management reports provided to BAM L.P. for the BAM Account for the period from January 2002 through 2008, bearing bates numbers MDPTQQ00159759, 00159771, 00159783, 00159795, 00159807, 00159819 and 00159830.

15. Attached hereto as Exhibit L are true and correct copies of the following trading records:

- (a) J.P. Morgan Account in the name of BLMIS statements for 2007 and 2008 trading in U.S. Treasury Bills;
- (b) Morgan Stanley Account in the name of Bernard L. Madoff statements for December 1999, 2002, 2003 and 2005 trading in U.S. Treasury Bills;

(c) Fidelity Account in the name of Bernard L. Madoff statements for January 2000, 2002, 2003, 2004, 2005, and 2006 trading in U.S. Treasury Bills, and various other securities.

16. Attached hereto as Exhibit M are true and correct copies of the statements for November 2006 and September 2008 for Chase Account No. 00000140081703 in the name of Bernard L. Madoff Investment Securities, bearing bates numbers JPMSAB 0003129-0003179 and 0004518-0004570. The names of customers have been redacted.

Dated: February 22, 2019
New York, New York

DENTONS US LLP

By: /s/Arthur H. Ruegger

Arthur H. Ruegger

1221 Avenue of the Americas

New York, New York 10020

Tel: (212) 768-6700

Fax: (212) 768-6800

arthur.ruegger@dentons.com

Attorneys for Defendants